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**SUBSTITUTE SENATE BILL 6310**

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**State of Washington**

**58th Legislature**

**2004 Regular Session**

**By** Senate Committee on Agriculture (originally sponsored by Senators Swecker, Rasmussen and Sheahan)

READ FIRST TIME 02/09/04.

1 AN ACT Relating to commodity commissions; and amending RCW  
2 15.66.070, 15.66.080, and 15.66.090.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 15.66.070 and 2002 c 313 s 46 are each amended to read  
5 as follows:

6 (1) The substance of a petition received under RCW 15.66.050 shall  
7 be set out in detail and designated as the proposal. A copy of the  
8 proposal shall be mailed to all affected parties or producers based on  
9 the list provided for in RCW 15.66.060 or 15.66.143, as applicable, and  
10 shall be posted on the department's web site.

11 (2) Notice of a public hearing to issue, amend, or terminate a  
12 marketing order shall be published ((once a week for four consecutive  
13 weeks)) in the form of a legal notice for a period of two days in a  
14 newspaper ((or newspapers, including a newspaper or newspapers)) of  
15 general circulation within the affected areas, as the director may  
16 prescribe(, and shall be mailed to all affected parties or affected  
17 producers)). The notice must also be posted on the department's web  
18 site. The director shall mail a copy of the public hearing notice  
19 along with a copy of the proposal as provided in subsection (1) of this

1 section to all affected parties or affected producers, as applicable,  
2 who may be directly affected by the proposal and whose names and  
3 addresses appear on the list compiled under this chapter. The mailing  
4 must include the department's web site address along with a description  
5 of the process for the issuance, amendment, or termination of a  
6 marketing order, as applicable.

7 ((+2)) (3) At a public hearing the director shall receive  
8 testimony offered in support of, or opposition to, the proposed  
9 issuance of, amendment to, or termination of a marketing order and  
10 concerning the terms, conditions, scope, and area thereof. Such  
11 hearing shall be public and all testimony shall be received under oath.  
12 A full and complete record of all proceedings at such hearings shall be  
13 made and maintained on file in the office of the director, which file  
14 shall be open to public inspection. The director shall base any  
15 findings upon the testimony received at the hearing, together with any  
16 other relevant facts available from official publications of  
17 institutions of recognized standing. The director shall describe in  
18 the findings such official publications upon which any finding is  
19 based.

20 ((+3)) (4) The director shall have the power to subpoena witnesses  
21 and to issue subpoenas for the production of any books, records, or  
22 documents of any kind.

23 ((+4)) (5) The superior court of the county in which any hearing  
24 or proceeding may be had may compel the attendance of witnesses and the  
25 production of records, papers, books, accounts, documents and testimony  
26 as required by such subpoena. The director, in case of the refusal of  
27 any witness to attest or testify or produce any papers required by the  
28 subpoena, shall report to the superior court of the county in which the  
29 proceeding is pending by petition setting forth that due notice has  
30 been given of the time and place of attendance of the witness or the  
31 production of the papers and that the witness has been summoned in the  
32 manner prescribed in this chapter and that he or she has failed to  
33 attend or produce the papers required by the subpoena at the hearing,  
34 cause or proceeding specified in the subpoena, or has refused to answer  
35 questions propounded to him or her in the course of such hearing,  
36 cause, or proceeding, and shall ask an order of the court to compel a  
37 witness to appear and testify before the director. The court upon such  
38 petition shall enter an order directing the witness to appear before

1 the court at a time and place to be fixed in such order and then and  
2 there to show cause why he or she has not responded to the subpoena.  
3 A copy of the order shall be served upon the witness. If it appears to  
4 the court that the subpoena was regularly issued, it shall enter an  
5 order that the witness appear at the time and place fixed in the order  
6 and testify or produce the required papers, and on failing to obey the  
7 order the witness shall be dealt with as for contempt of court.

8 **Sec. 2.** RCW 15.66.080 and 1961 c 11 s 15.66.080 are each amended  
9 to read as follows:

10 (1) The director shall make ~~((and publish))~~ findings upon ~~((every))~~  
11 material points controverted at the hearing and required by this  
12 chapter and upon such other matters and things as he or she may deem  
13 fitting and proper. ~~((He shall also issue a recommended decision based~~  
14 ~~upon his findings and shall cause copies of the findings and~~  
15 ~~recommended decision to be delivered or mailed to all parties of record~~  
16 ~~appearing at the hearing, or their attorneys of record.))~~ Based upon  
17 those findings, the director shall make conclusions and develop and  
18 issue a recommended decision. The findings, conclusions, and  
19 recommended decision, and the full text of the proposal shall be posted  
20 on the department's web site. For amendment and termination petitions,  
21 the affected commission may include a link on its web site to the  
22 department's web site.

23 (2) The recommended decision ~~((shall contain the text in full of~~  
24 ~~any order, or amendment or termination of existing order, and))~~ may  
25 deny or approve the proposal in its entirety, or it may recommend a  
26 marketing order containing other or different terms or conditions from  
27 those contained in the proposal: PROVIDED, That the same shall be of  
28 a kind or type substantially within the purview of the notice of  
29 hearing and shall be supported by evidence taken at the hearing or by  
30 documents of which the director is authorized to take official notice.  
31 The director shall not approve the issuance, amendment, or termination  
32 of any marketing order unless he or she shall find with respect  
33 thereto:

34 ~~((+1))~~ (a) That the proposed issuance, amendment or termination  
35 thereof is reasonably calculated to attain the objective sought in such  
36 marketing order;

1        ~~((2))~~ (b) That the proposed issuance, amendment, or termination  
2 is in conformity with the provisions of this chapter and within the  
3 applicable limitations and restrictions set forth therein will tend to  
4 effectuate the declared purposes and policies of this chapter;

5        ~~((3))~~ (c) That the interests of consumers of such commodity are  
6 protected in that the powers of this chapter are being exercised only  
7 to the extent necessary to attain such objectives.

8        (3) If the director's recommended decision does not make any  
9 changes to the proposal, notification will be made by mail in the form  
10 of a postcard reciting the director's recommended decision. The  
11 postcard will also include the department's web site address where any  
12 person can access the full text of the director's findings,  
13 conclusions, and recommended decision.

14        (4) If the director's recommended decision makes changes to the  
15 proposal or does not support the proposal, notification will be made by  
16 mail in the form of a letter describing the changes made or explaining  
17 the reason for not supporting the proposal and a referendum. The  
18 letter will also include the department's web site address where any  
19 person can access the full text of the director's findings,  
20 conclusions, and recommended decision.

21        (5) After the ~~((issuance of a))~~ director issues his or her  
22 findings, conclusions, and recommended decision all interested parties  
23 shall have a period of not less than ~~((ten))~~ fifteen days from the date  
24 of the mailing of the postcard or letter to file ~~((objections))~~  
25 statements with the director in support of or in opposition to the  
26 recommended decision. The director shall consider the ~~((objections))~~  
27 additional statements and shall issue his or her final decision  
28 ~~((which)).~~ The final decision may be the same as the recommended  
29 decision or may be revised in ~~((the))~~ light of ~~((said objections. The~~  
30 final decision shall set out in full the text of the order)) the  
31 additional information received in response to the recommended  
32 decision. The director shall ~~((deliver or mail copies of the final~~  
33 decision to the same parties to whom copies of the findings and  
34 recommended decision are required to be sent)) notify affected parties  
35 of his or her final decision by mail in the form of a postcard.  
36 Notification shall include the department's web site address where any  
37 person can access the full text of the director's findings,

1 conclusions, and final decision and the full text of the final  
2 proposal. If the final decision denies the proposal in its entirety,  
3 no further action shall be taken by the director.

4 (6) Affected parties who do not have access to materials posted on  
5 the department's web site may request notification by fax or mail.

6 **Sec. 3.** RCW 15.66.090 and 2002 c 313 s 47 are each amended to read  
7 as follows:

8 After the (~~issuance by the~~) director (~~of the~~) issues his or her  
9 final decision approving the issuance, amendment, or termination of a  
10 marketing order, the director shall determine by a referendum whether  
11 the affected parties or producers assent to the proposed action or not.  
12 The director shall conduct the referendum among the affected parties or  
13 producers based on the list as provided for in RCW 15.66.060 or  
14 15.66.143, as applicable, and the affected parties or producers shall  
15 be deemed to have assented to the proposed issuance or termination  
16 order if fifty-one percent or more by number reply to the referendum  
17 within the time specified by the director, and if, of those replying,  
18 sixty-five percent or more by number and fifty-one percent or more by  
19 volume assent to the proposed order. The producers shall be deemed to  
20 have assented to the proposed amendment order if sixty percent or more  
21 by number and sixty percent or more by volume of those replying assent  
22 to the proposed order. The determination by volume shall be made on  
23 the basis of volume as determined in the list of affected producers  
24 created under provisions of RCW 15.66.060, subject to rules and  
25 regulations of the director for such determination. The director shall  
26 consider the approval or disapproval of any cooperative marketing  
27 association authorized by its producer members to act for them in any  
28 such referendum, as being the approval or disapproval of the producers  
29 who are members of or stockholders in or under contract with such  
30 association of cooperative producers: PROVIDED, That the association  
31 shall first determine that a majority of the membership of the  
32 association authorize its action concerning the specific marketing  
33 order. Results of the referendum shall be mailed to all affected  
34 parties in the form of a postcard. If the requisite assent is given,  
35 the director shall (~~promulgate~~) adopt the order (~~and shall mail~~

1 ~~notices of the same to all affected producers~~)).

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